TENANTS COMPENSATION UNDER CONTROLLED PREMISES (SPECIAL PROVISIONS) ACT — THE TENABILITY OF CERTAIN CLAIMS

The Controlled Premises (Special Provisions) Act,* was passed in 1969 to expedite recovery of possession of rent-controlled premises in designated areas for the purposes of urban renewal and also to provide for compensation for the dispossessed tenants. Since it came into operation on 1st February, 1970 there have been fifty seven applications for recovery of possession before the Tenants Compensation Board, although to date only twenty have been heard by the Board. These twenty applications involved one hundred and thirty tenants and sub-tenants. Of these, twenty six tenants settled their claims before the actual hearing. In those claims which were heard by the Board, the disputes centred on the quantum of compensation. The apparent docility of the tenants may have been a manifestation of their public spiritedness, or it may probably reflect their attitude of being contented with adequate monetary compensation as they could without too much difficulty find suitable alternative accommodation. Furthermore, as the writer has observed elsewhere,[1] the first such "disputed" application heard by the Board seemed to show that the tenants affected were restrained and conservative in their claims for fair compensation under section 7 of the Act. The then newness of the Act and general unfamiliarity of its provisions may have been the real reasons for this.

However in two subsequent cases, *O.C.B.C. v. Ko Liong Hin*[2] and *O.C.B.C.* v. *Eastern Optical Co. Ltd. & Ors.*[3] (both concerning the Overseas Chinese Banking Corporation), a change in attitude on the part of the tenants is already discernible. In these two applications, not only did the tenants asked for greater sums of compensation but they also explored the possibilities of new heads of claim. Their attempts involved a number of issues concerning the ambit of the residuary provision "any other relevant matter" under section 7(2), as well as the relevancy of certain factors in assessing compensation under the acknowledged heads of claim. It is proposed to discuss the validity of these new claims and the related issues as raised in both applications.

* Singapore Statutes, Rev. Ed. 1970, Cap. 267.

1. [1971] 1 M.L.J. xxxvi - xli.
2. Application No 17 of 1970 concerning No 15 South Canal Road.
3. Application No 18 of 1970 concerning No 15 South Canal Road.

II. BACKGROUND

A. *O.C.B.C.* v. *Ko Liong Hin*

Facts

In this case, the premises, a two storeyed shop-house, was purchased by the landlord recently at the purchase price of $270,000. The rental paid by the tenant was $275 per month. One late Ko Teck Kin was the tenant of the premises and his business operations were conducted through a number of companies[4] which used the same premises. The defendants were the executors of the Estate of Ko Teck Kin.

Claims

The compensation claimed by them totalled $1,209,445. The heads of claim were as follows:

Goodwill [calculated according to benefit accruing to landlord]	$1,056,000
Location and siting [based on tea money paid]	$ 125,000
Cost of removal	$ 13,742
Loss of income	$ 60,000
Amount of money paid by way of deposit for new premises	$ 14,803
	$1,269,545

Sum Awarded

The Board after considering the claims awarded the sum of $67,266 to the defendants.

B. *O.C.B.C.* v. *Eastern Optical Ltd. and Others*

Facts

The ground floor of the two storeyed premises involved in this application was occupied by Eastern Optical Company as the chief tenant who used it for commercial purposes. The chief tenant had let a portion of the ground floor to a sub-tenant Cheong Chee Kan who used is at a dental surgery. The chief tenant paid a rental of $229.65 per month and the sub-tenant paid $100 per month. The landlord had prior to the hearing offered the chief tenant $27,558 and the sub-tenant $12,000 by way of compensation. The chief tenant rejected the offer but the sub-tenant accepted the offer made to him as the minimum compensation to which he was entitled.

4. Four altogether *viz*. Kah Hin Rubber Company (Pte.) Ltd., Ho Chiang Shipping Company (Pte.) Ltd., Chin Cheong Realty Company Ltd. and Ko Rubber Plantations Company (Pte.) Ltd.

The first floor was let to Lee Yong the chief tenant for residential purposes at a rent of $40.85 per month. Lee Yong has been in occupation for forty years and over the years he had sub-let various rooms to six sub-tenants. The rentals paid by these sub-tenants were between $20 to $35 per month for one room.

Ground Floor

Claims

1) Eastern Optical (Pte.) Company Ltd. — chief tenant

Loss of income	$ 9,285
Loss of goodwill	$35,000
Cost of removal	$15,000
Amount of rental paid for new premises	$18,000
Additional expenditure incurred	$ 6,000
	$83,285

2) Cheong Chee Khan — sub-tenant

A minimum compensation of $12,000 was agreed to privately between him and the landlord. But if the chief tenant should be awarded a sum larger than the amount offered i.e. $27,558, the sub-tenant would then get a proportion of the amount awarded in excess of the sum offered.

Counsel for the sub-tenant claimed that both his client and the chief tenant ought to be compensated for solicitors' fees incurred.

Sums Awarded

1) The chief tenant was awarded $28,758.

2) The sub-tenant was awarded $12,900.

First Floor

Claims

The chief tenant and all the sub-tenants claimed a sum representing a portion of the amount which all the tenants of the entire premises (ground and first floor) should get by taking into account the projected profits to be reaped by the landlord when the intended development is completed. According to their counsel's calculations this should be a portion of $100,000.

Sums Awarded

Lee Yong, chief tenant with 40 years occupation	$ 6,945.00
Low Chow Teo, sub-tenant with 11 years occupation paying $35 per month rent	$ 3,757.00
Tan Tai Gan, sub-tenant with 4½ years occupation paying $25 per month rent	$ 2,677.00
Tang Moi, sub-tenant with 35 years occupation sharing with Chow Kok Hon, sub-tenant with 11 years occupation the rental of $25 per month	$ 4,499.00
	$17,878.00

III. BENEFITS ACCRUING TO THE LANDLORD ON THE COMPLETION OF DEVELOPMENT

As a preliminary matter, counsel for Ko Liong Hin,[5] supported by counsel for the tenants of the first floor of the other premises involved (No. 15 South Canal Road[6]) asked for certain detailed information[7] regarding the proposed development by the landlord. The reason for their request was to enable them to calculate with more accuracy the potential profits that would accrue to the landlord, a factor submitted by them to be within the term "other relevant matter" to be considered by the Board. The Board refused this preliminary application on two grounds. First, in the opinion of the Board, the phrase "other relevant matter" must be read *ejusdem generis* with the items listed in section 7(2) of the Act. Secondly, the Board considered the probable adverse effects on private development of urban areas if such factor was regarded as relevant for purposes of compensation.

However despite this hostile indication given by the Board counsel for Ko Liong Hin persisted in bringing the factor of potential profits under the claim for loss of goodwill. Equally tenacious, counsel for the tenants of the first floor of 15 South Canal Road insisted on resting his whole case on the point that such potential profits were within "other relevant matter."

5. Application No. 17 of 1970 concerning No. 13 South Canal Road.

6. Application No. 18 of 1970 concerning No. 15 South Canal Road.

7. Counsel asked for details concerning the purchase price of the premises, the cost of construction of the new centre, the coverage of the built up area.

A. Potential Profits As Relevant To "Loss Of Goodwill"

The formula for assessing goodwill[8] put forward by counsel for Ko Liong Hin was to multiply by four the total annual rental for a period of eight years. He arrived at this formula by estimating that when the project was completed the landlord would have a 400% profit on this capital expenditure, hence the multiplication by four. The total of eight years' annual rental was taken simply because it is the minimum compensation provided by the Act.[9]

The Board not unexpectedly resisted the arguments to consider the potential profits of the landlord as being relevant to loss of goodwill. In dismissing this claim the Board said that as the factor mentioned in section (7) (2) (b) is "loss of goodwill (if any) attributable to any change of location of the tenant's business", goodwill *simpliciter* was not the subject for compensation. Section (7)(2)(b) unambiguously provides that the only relevant aspect of goodwill that is to be compensated is the loss of it consequent upon removal of the business from its present site to the new one. Therefore it cannot be seriously disputed that the potential profits accruing to the landlord are not pertinent to the matter.[10]

B. Potential Profits As Being Within "Other Relevant Matter"

Counsel for the tenants of the first floor of No. 15 South Canal Road urged the Board to consider the potential profits of the landlord under this residuary term. His clients, having been occupying the premises for purely residential purposes it was not open for him to claim for loss of goodwill.[11] His first formula for assessing the amount due under this head was to multiply by fifty [12] the sum of $1 per square foot of the land to be developed. Thus the amount due to all the occupants of the entire premises would be [$1 × 2,000[13]] × 50 amounting to $100,000. His alternative formula was to take the price, which O.C.B.C. paid for the back-lane behind these premises, at $140 per square foot and to multiply it by 2,000, and then to subtract from this total sum the actual price which O.C.B.C. had paid for the premises. The balance thus arrived at was claimed as the total compensation payable to all the occupants of the entire premises for the potential profits that would accrue to the landlord. His clients, the occupants of the first floor, would be entitled to a portion of this sum.

Again the Board rejected this claim on the ground that the phrase "other relevant matter" should be read *ejusdem generis* with the items

8. Section 7(2)(b).
9. Section 7(1) (a).
10. For a discussion of this head of claim see p. 267, below.
11. Section 7(2).
12. This figure was taken from the number of floors of the complex which the landlord planned to build.
13. This is the approximate area of the controlled premises in square foot.

set out in section 7 (2) (a)[14]. In the opinion of the Board these items related to the "occupation of the premises itself and the loss sustained by the tenant upon the grant of recovery of possession of the controlled premises to the landlord." However is there a genus necessarily to be inferred from the listed items ?

a) *Whether any genus disclosed ?*

An examination of section 7 (2) (a) would show that items (i) to (iii) of paragraph (a) pertain to losses or expenditure incurred by the tenant on account of the dispossession. Item (iv) relates to occupation of the premises. As it stands this item could be used against the tenant's interest especially in the case of those who are really in need of financial help.[15]

Similarly item (v) does not in itself enlighten the reader as to what it should cover. It is capable of both a narrow and wide construction. In its narrowest sense "location and siting" could be limited to matters relating to the convenience of a tenant. For example, if a tenant living in a controlled premises works in a shop across the road, his place of residence is ideally suitable and convenient to his work. So if he were to move to another district he would then have to suffer the inconvenience of having to come to work by bus as well as having to incur additional expenses. Similarly one could consider "location and siting" in terms of the premises being situated near a school where his children are studying or near shopping facilities for his wife. Viewed in this light, "location and siting" would come within the rubric of losses sustained or inconveniences suffered consequent on the dispossession.

But without unduly straining the language, "location and siting of the controlled premises" may also be interpreted to cover such matters as the suitability of the site for a particular use. This could be either (a) the use to which the tenant has put it or (b) the use permitted by law for that area at the time of the dispossession, which use need not be the one to which the tenant has put it. For example, a tenant may be occupying the premises for residential purposes although under the current zoning regulations it could be used as office space. In the

14. Controlled Premises (Special Provisions) Act 1969, s. 7 (2) (a) : "In determining the amount of compensation to be awarded to *a* tenant and sub-tenant under this section the Board without prejudice to its right to consider any other relevant matters shall have regard to the following matters:-
    a) in the case of controlled premises used or occupied for commercial purposes:-
        (i) loss of income attributable to the recovery of possession of the controlled premises;
        (ii) loss of goodwill (if any) attributable to any change of location of the tenant's business;
        (iii) cost of removal to another site;
        (iv) annual rent paid for the controlled premises;
        (v) location and siting of the controlled premises.

15. If it is the intention to help such tenants then this factor should only be used to show the loss that would be suffered by the tenant because of higher rents that he would have to pay for alternative premises.

context of uses mentioned in (a) or (b) the situation of the premises *per se* has a value. Does the Act intend to include compensation for this value, which really amounts to requiring the landlord to purchase this from the tenant ?

Since the Act itself does not provide any clues as to the solution of this problem one would have to return to first principles. One may begin by asking the question why should a tenant be entitled to compensation at all ? In a strictly legal approach, a tenant has no interest in the premises once the lease has expired or if he has been ejected pursuant to a valid notice to quit. There is therefore in such a case nothing lost by the tenant for which compensation is required. In the case of rent controlled premises a tenant is given the advantages of a fixed low rental and security of tenure by reason of statutory curbs on the freedom of contract. Once these statutory curbs are removed, the ordinary rules of landlord and tenant would once more govern the relationship between the parties. Thus even a tenant of rent-controlled premises has no legal right to any compensation on the landlord's lawfully recovering possession pursuant to the relevant statutory provisions. However where the premises are rent-controlled and the legislature has further intervened to provide for compensation for dispossessed tenants, one may assume that at least one of its primary aims is to soften the blow for tenants who had been living on a budget geared to a low rental or to cushion small businesses in their period of adjusting to new premises.[16] Therefore where an ambiguity arises in connection with compensation as is the case with "location and siting" it may be argued that such expression should be construed with reference to these socio-economic factors.

A broad interpretation could and should be placed on the expression under discussion. The basis for so suggesting is the Parliament's criterion for calculating the minimum compensation by fixing it on the basis of the average tea money payable.[17] This is the amount that a tenant would get on assignment or surrender of the premises as controlled premises. It may be inferred from this that the Parliament seemed to treat such tenants as quasi-owners in granting them compensation for site value in terms of its existing or permitted use (as submitted earlier) for reasons of social policy rather than legal rights. Therefore in construing ambiguous terms relating to compensation this fact ought also to be considered. It is suggested that "location and siting of controlled premises" in section 7(2) (a) should be construed to include not only the special value of the situation of the premises to a particular tenant i.e. the inconvenience factor, but also the wider connotation of suitability of the site for existing or permitted use.

16. The desirability of paying tenants compensation was never questioned in any of the memoranda submitted to the Select Committee on the Recovery of Possession (Controlled Premises) Bill nor in the course of the proceedings before the Select Committee.

17. See the address made by the Honorable Minister of Law when moving the Bill. Singapore Legislative Assembly Debates, 1968, Vol. 27, at p. 421.

If this interpretation of the term be accepted then the items set out in section 7(2) (b) are so diverse as to disclose no genus altogether, in which case the rule of *ejusdem generis* is not applicable.

b) *A submission*

However, despite the susceptibility of the expression "location and siting" to the wide interpretation as suggested, it would be wholly improper, in the context of the *raison d'etre* of the Act, to "compensate" a tenant for potential profits of the landlord. Although when seen in the context of "location and siting" such profits can be regarded as the value of the location and siting as a site cleared for development, and although in regard to compensating land-owners, when their land has been compulsorily acquired, the value of potential use is one of the matters to be considered in connection with market value of the premises, a tenant of rent-controlled premises in recovery proceedings should not be compared with a landowner in compulsory acquisition proceedings. Thus while such factor may properly be considered in compulsory acquisition compensation, it does not follow that this would be equally relevant for purposes of adequate compensation under the Controlled Premises (Special Provisions) Act.

It might be said that if social policy is the justification for compensation for location and siting in its wider connotation being allowed, such social policy should also be sufficient reason for the tenant sharing in the potential profits of the landlord.[18] However it is submitted that, even in the uncertain waters of social policy, compensation under this head is hardly justifiable. The profits of the landlord that the tenant demands a share in, are not actual realized profits. It is elementary knowledge that the price of land even for commercial user is a fluctuating item dependent on supply and demand as well as on other less controllable matters as recession or war. The projects of the landlord generally take four to five years for completion, during which time it is possible that the price for office or shopping space may fall. The profits are potential; the risks are borne by the landlord; the entire capital is provided by the landlord; and the land belongs to the landord. The tenant, on the other hand, if compensation be permitted under this head, would enjoy the profits immediately; he risks nothing; he provides no capital; and even the land does not belong to him. It is therefore difficult to find a social or public policy which requires a particular individual as opposed to the entire community to be given a share in the profits of a venture to which he has contributed nothing.

IV. COMPENSATION FOR TEA MONEY PAID ?

Tea money refers to the amount paid by way of a premium by the tenant on his first acquiring the premises either by way of a lease, sublease, assignment or surrender of a lease. The amount of the tea money payable on such an occasion is based *inter alia* on the existing

18. This may be inferred from counsel's arguments for the tenants of 15 South Canal Road.

site value of the premises in a locality. Under the Control of Rent Act[19] the payment and receipt of tea money is an offence,[20] nevertheless, the payment of such premium is a well-known practice.

a) As a *separate head of claim*

In another application before the Board, *Ocean Properties Ltd.* v. *Deng Ting Kuan*[21] heard *circa* the same time as the two applications under discussion, compensation for tea money paid was asked for. The Board rejected this claim on two grounds. First, if the Board were to give it any recognition such would be condoning an act prohibited by the law. Secondly, even if it was proper to recognise it, it was outweighed by the benefits of user by the tenant derived from "the initial payment of this sum accompanied by the original low rental." The Board stated that in awarding compensation it must also take into account the benefits flowing from long occupation at low rent.[22]

It is submitted that the Board was correct in so deciding. The law, despite its being more "honoured in its violation than in its observance"[23], is that the paying and receiving of tea money is an offence. Thus in permitting a tenant who had so broken the law to be subsequently recompensed the Board would undoubtedly be condoning an illegal act.

b) As *a factor in "location and siting"*

In the discussion on the ambit of "location and siting" above, it has been suggested that for the purposes of the Act "location and siting" could and should be given an interpretation that would include the value of the site for existing use or permitted use for the area. If this is accepted the question then arises as to how this is to be assessed. Essentially this is a problem for the valuers and accountants and the only reason that it is being raised here is to consider the relevancy and admissibility of evidence of tea money paid for the premises.

When counsel for Ko Liong Hin[24] submitted that tea money paid by the tenant was a relevant factor pertinent to the assessment of location and siting, the Board rejected it for the same reasons as those given by it for rejecting the claim for the tea money paid as a claim in itself.

As stated earlier payment of tea money is an offence and it is also a practice. It is the "land market's" evaluation of a fair price for existing site value of the premises in a locality. The Legislature in

19. Singapore Statutes, Rev. Ed,, 1970, Cap. 266.

20. S. 3.

21. Application No. 14 of 1970.

22. It may be noted that the low rental paid was used by the Board as a factor against the interest of the tenant.

23. See T.T.B. Koh, "Rent Control in Singapore", (1966) Malaya L.R. 32, 176, at p. 190.

24. Application No. 17 of 1970.

laying down the minimum compensation payable had taken this as its sole criterion.[25] Thus if it were used as a guide to the value of location and siting, the Board would only be using one of the more realistic reflections of the "market value" of the premises. It is therefore suggested that while the Board was correct in not allowing compensation for tea money paid as a separate head of claim it need not have rejected it as a guide to the site value of the premises.[26] To use it for the latter purpose is not to condone an illegal act.

However unobjectionable it may be in principle to take as a guide the tea money paid, there are obvious practical difficulties in trying to prove the amount paid. Since such payment and receipts are illegal, they are presumably not accompanied by any documents or receipts. It would seem that much reliance would have to be placed on the examination of witnesses. Here lies another obstacle: these persons may be reluctant to come forward and testify on oath that they paid or received $\$x$ by way of tea money, for this would render them liable to prosecution under section 4 of the Control of Rent Act. Perhaps to overcome this obstacle, use could be made of the proviso to this section which requires the written sanction of the President to any prosecution under the section.

V. Loss of goodwill attributable to any change of location of the tenant's business

Goodwill refers to the connection of a business with customers, and it may be based on one or more of the following factors:[27]

1) the skill, or personality of the claimant - proprietor,

2) the existence of the business in that situation for a length of time,

3) the situation of the premises for the nature of his business.

For the purposes of assessing fair and adequate compensation under section 7 (2) (b) it is the "loss of goodwill" attributable to change of "location and siting" that should be considered.[28] Thus it would seem that of the three factors listed above the only relevant ones for the purposes of the Act are (2) and (3).

25. "[Reasonable compensation would be somewhat equivalent to the tea money which is paid in Singapore for a transfer of the tenancy or for the surrender of possession. But obviously even the amount of tea money varies. You may pay more for business premises than for a residence. Hence eight years for business and six years for residential premises". Singapore Legislative Assembly Debates, Vol. 27, at p. 421, *per* the Honorable Minister for Law.

26. The Board's objection to the use of tea money paid on the ground that such was outweighed by the benefits of long occupation at low rent is not relevant to the proposed use of tea money paid as a factor relevant to the assessment of site value of the premises.

27. See Cripps, *Compulsory Acquisition of Land*, 11th ed., 1962, at pp. 925 *et seq.*.

28. See earlier discussion of potential profits as being relevant to goodwill under s.7(2)(b).

It would appear that the usual method of assessing the loss of goodwill resulting from the change in location of a business that is applied in England in cases of compulsory acquisition is to take the average profits of a business for three years and to multiply that by the appropriate number of years of purchase.[29] However an alternative method adopted by the Lands Tribunal in *Tobin* v. *London County Council*[30] and approved of by the Court of Appeal[31] was to take as the loss of goodwill the difference between (a) three years' purchase of the average profits over a period of three years prior to disturbance and (b) one and a half years' purchase of the average of two years' profits of the transferred business. In assessing loss of goodwill for the purposes of section 7(2) (b) it may not be inappropriate to resort to the English practice in cases of assessing loss of goodwill in cases of compulsory acquisition.

The head of claim in each instance is similar; it is not a case of the acquiring body or the landlord purchasing the goodwill, but in either case it is one of compensating the person affected for the "diminution in its value in consequence of his compulsory ejectment from the premises he is occupying".[32] Whether there is any loss of goodwill on account of the change in location would depend on the nature of business concerned (e.g. whether professional, wholesale or retail), and the site of the alternative premises, (whether it is physically close to, and whether it approximates in character to, the premises being recovered).

It would appear that of all the listed heads of claim in section 7(2) (b) the assessment of loss of goodwill is the most difficult to calculate. The expertise of a valuer or accountant especially in determining the appropriate years of purchase in each case would seem to be necessary and it is surprising that in the applications before the Board no use was made of such professional service.

Another seemingly relevant question is whether a tenant who is retiring from business should be compensated under this head. This question was raised in the case of the sub-tenant of Eastern Optical Ltd.[33]. The Board answered this question in the negative. It seems quite clear that where the business is to be extinguished there can be no loss of goodwill attributable to the change of location. But this does not mean that such a tenant should receive no compensation at all. It is suggested that, if the tenant can prove that repossession is the immediate or sole cause of the tenant's ceasing his business, or that it causes him to retire sooner than he would otherwise do, he merits some compensation either under the heading "loss of income"[34] or under the residual heading of "other relevant matter".

29. See Cripps, *op. cit.*, at p. 928.

30. (1957) 8 P. & C. R. 453.

31. *London County Council* v. *Tobin* (1959) 10 P. & C.R. 79.

32. Cripps, *op. cit.*, p. 925 *et seq.*

33. Application No. 18 of 1970.

34. s.7(2)(b)(ii).

VI. COMPENSATION FOR SOLICITOR'S COSTS ?

Should solicitor's fees incurred by the tenant consequent upon the repossession of the controlled premises be a suitable or relevant head of claim ? This interesting point was raised by counsel for the sub-tenant of Eastern Optical Ltd.. The Board rejected this claim. Its reasons for so rejecting were that under the Act the Board does not have power to award costs of hearings before it, neither does the Act provide for taxation of costs by the High Court. It was the Board's opinion that the award of compensation for such a claim would involve the determination by the Board of what would be justifiable costs in respect of work done for any tenant. Further the Board indicated that the allowance of such head of claim might result in the bringing of frivolous and unnecessary applications.

Solicitor's costs incurred as a result of repossession by the landlord may be divided into two categories:—

1) fees incurred in connection with the conveyance or lease of the alternative premises,

2) fees incurred in connection with (a) the formulating of claims of the tenant, (b) the advising of the tenant on the adequacy of the landlord's offer and (c) the proceedings before the Board.

As regards the former category of fees, it would appear that there should be little doubt as to the relevancy of this head of claim. The expenditure involved in procuring alternative premises flows directly from the tenant's having to move which is in turn caused by the landlord's repossession.

The latter category requires the consideration of three issues: (i) whether such expenditure is within "other relevant matter" under section 7(2), (ii) whether the Board can properly deal with it in view of the fact that the Board has no power to award costs and (iii) whether the awarding of compensation for such expenditure is against public policy.

(i) *Is the expenditure a relevant matter for compensation ?*

It may be pertinent to note that the Lands Tribunal in England in the case of *Tobin* v. *London County Council*[35] allowed compensation for solicitor's fees for the formulation of claims pursuant to the notice to treat given by the acquiring authority. The procedure relating to compulsory acquisition of land in England requires the landowner, on the receipt of a notice to treat, to state his interest in the land involved as well as to indicate the amounts by way of compensation that he is claiming under particular heads.[36] This has to be done by every recipient of a notice to treat irrespective of whether there will be a reference

35. (1957) 8 P. & C. R. 453.

36. Land Clauses Act, 1845, s. 18.

to the Lands Tribunal.[37] Under the Lands Tribunal Act, 1949, the Tribunal has the power to award the costs of the proceedings which may be taxed either by the Registrar of the Lands Tribunal or by the taxing Master.[38] Nevertheless the Lands Tribunal has held that the awarding of compensation for legal expenses in compiling a claim was not incompatible with the rule that costs of the proceedings could be awarded by the Tribunal. The Tribunal viewed the matter solely from the point of whether the incurring of the expenses was a direct consequence of the notice to treat. It is to be noted that the claim under this head made by the plaintiff related only to fees incurred in the formulation of the claims and did not include the legal fees incurred in the proceedings before the Tribunal.

In regard to compensation for dispossessed tenants under the Controlled Premises (Special Provisions) Act, there is no clear demarcation of the solicitor's work into (a) formulation of claims and (b) proceedings before the Board; neither is there an obligation on the tenant to state and particularise his claims prior to the offer being made by the landlord. However it is suggested that this should not affect the reasonableness of resorting to a lawyer in such circumstances. Assuming that a landlord, who wishes to recover possession, makes an offer to a tenant, it is undoubtedly reasonable for the tenant to consult his lawyers as well as valuers and accountants as to whether the sum offered is sufficient or fair to him. Alternatively a landlord who wishes to reclaim possession may initially ask the tenant how much compensation to which he thinks he is entitled. In which event is it unreasonable for the tenant to turn to his lawyers for help simply because the Act does not make it obligatory for him to do so ? It is suggested that the taking of legal advice in these circumstances is reasonable and it flows directly from the manifestation of the landlord's desire to recover possession of the premises. Therefore such head of claim is a "relevant other matter" which the Board can consider.

On the other hand it is suggested that compensation should not extend to cover solicitors fees with respect to proceedings before the Board. The reason for this rests on grounds of policy as will be noted later.

(ii) *Is the awarding of compensation for solicitor's fees incurred ultra vires the powers of the Board ?*

The Board, being entirely a creature of statute, has only the powers which the Act confers upon it and the Act in this instance has not given the power to award costs. Thus each party bears his own costs in regard to proceedings before the Board. However does this absence of power to deal with costs necessarily mean that the Board has no power to award compensation for legal fees which are found to be reasonable and have been reasonably incurred ? In other words does the awarding of compensation for such expenses necessarily amount to the awarding of costs ?

37. Although there is nothing to compel the owners of land to supply the particulars demanded in the notice to treat, provisions are made for inducing the supply of particulars. See generally Cripps, *op. cit.*, pp. 482 *et seq.*

38. S. 3(5); Lands Tribunal Rules, 1956, r. 49(1).

Generally in the computation of costs would be included not only legal fees incurred in the actual hearing before a tribunal or court but also fees for "getting up". Under the Controlled Premises (Special Provisions) Act, the formulation of claims and advice given as to the sufficiency of the landlord's offer would be part of "getting up". If the Board had the discretion to award costs, the expenses for these items of "getting up" would be included in the costs. But it is suggested that the lack of a power to deal with costs does not *ipso facto* involve a similar lack of power to give compensation for "other relevant matter" which happens to be a part of the costs.

Further, the basis of awarding costs is different from that of awarding compensation for legal expenses incurred. In the awarding of costs the judge is exercised more by (i) the reasonableness or otherwise of bringing the case, (ii) the manner in which the case has been conducted e.g. the proceedings may have been unduly protracted. Whereas in awarding compensation for legal fees incurred the only pertinent factors to be considered are (i) whether the legal advice sought flowed naturally and reasonably from the repossession and (ii) whether the fees themselves are reasonable with reference to the amount involved and the complexities or otherwise of the case. Assuming the Board had the discretion to award costs it would not be logically inconsistent for it to deny costs to the tenant on the ground that there was no necessity for the matter to be referred to the Board, e.g. where the award of the Board being equivalent to or less than the sum offered by the landlord; even then the Board could allow the tenant compensation for the legal expenses incurred in ascertaining the adequacy of the landlord's offer or in the compiling of claims for the landlord's consideration.

(iii) *Whether the awarding of compensation for legal expenses is against public policy ?*

The public policy in question would be that of encouraging landlords and tenants to come to an amicable settlement so as to expedite much needed urban redevelopment and to avoid waste of time on the part of the members of the Board as well as of the parties concerned.

It is conceivable that if compensation were allowed for all solicitors fees tenants would in all cases bring their claims regardless of merit before the Board.[39] The landlords would be providing legal aid for tenants. This would be most undesirable. However if a demarcation be made between the compilation of claims and advice on adequacy of the landlord's offer on the one hand and the actual proceedings before the Board on the other,[40] the tenant would be more circumspect in bringing his case to the Board.

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39. This was one of the objections raised by the Board to the awarding of such compensation.

40. See p. 260, above.

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